



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 12, 2023

IN THE MATTER OF:

Appeal Board No. 628031

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective November 4, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by UNITED CEREBRAL PALSY prior to November 4, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. The employer did not appear, either personally or through a representative. By decision filed March 31, 2022 (122-01697), the Administrative Law Judge overruled the initial determination.

The employer applied to reopen the decision of the Administrative Law Judge filed March 31, 2022. Upon due notice to the parties, a telephone conference hearing was held on March 31, 2023 at which testimony was taken. There were appearances on behalf of the employer. The claimant appeared but did not participate because she did not have a copy of the hearing file from the March 31, 2022 hearing. By decision filed February 06, 2023 (A.L.J. Case No.), the Administrative Law Judge granted the employer's application to reopen 122-01697 and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. The claimant did not participate at the telephone conference hearing

held in because she did not have a copy of the original hearing file from the prior hearing. We note that the prior hearing was held nearly one year earlier and have determined that a further hearing should be held in this matter on the underlying issue of misconduct.

Because the parties have appeared at separate hearings, there has been no opportunity for cross-examination. Prior to the remand hearing, the parties are directed to review the transcripts of the prior hearings. At the remand hearing, they each shall be offered the chance to cross-examine the testimony provided by the other party. To that end, the employer is directed to produce Bambi La Goy, Kathleen Mulkin, Robert Bice, Nichole Belonge, and Theresa Burnor at the remand hearing.

The claimant also shall be given the opportunity to object to Hearing Exhibits 3 through 9 at the remand hearing.

The parties may produce any other relevant witnesses or evidence. The judge may take any other testimony or evidence necessary to decide the case.

The Hearing Section is directed to provide both parties full copies of the hearing file, including all transcripts and exhibits.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Appeal Board and the Administrative Law Judge are rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing on the issue of misconduct only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Hearing Section shall provide both parties with full copies of the hearing file, including all transcripts and exhibits; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the

issue of misconduct, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER